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SUBJECT: PERU NATIONAL TRADE ESTIMATE REPORT 2009

REF: SECSTATE 88447

11. (U) In response to State 88447, Embassy Lima reports the following update for its National Trade Estimate Report. This report has also been sent as a Word document with track changes to USTR by email.

12. (U) TRADE SUMMARY

The 2008 data is current as of August 2008. The U.S. goods trade deficit with Peru was \$327 million, a decrease from \$1.1 billion in 12007. U.S. goods exports in 2008 were \$4.3 billion, up from \$4.1 billion in 2007. Corresponding U.S. imports from Peru were \$4.0 billion in 2008, a decrease from \$5.2 billion in 2007. Peru is currently the 40th largest export market for U.S. goods.

The stock of U.S. foreign direct investment (FDI) in Peru was \$6.8 billion in 2007 (latest data available), up from \$5.0 billion in 12006. U.S. FDI in Peru is concentrated largely in the mining sector.

13. (U) UNITED STATES - PERU TRADE PROMOTION AGREEMENT (PTPA)

The United States and Peru signed the United States-Peru Trade Promotion Agreement (U.S.-Peru TPA) on April 12, 2006. The Peruvian Congress ratified the Agreement in June 2006, and a protocol of amendment in June 2007. On December 14, 2007, President Bush signed the United States-Peru Trade Promotion Agreement Implementation Act. The Agreement will enter into force after Peru has taken the necessary steps to implement its obligations.

14. (U) IMPORT POLICIES

Tariffs

Peru applies tariffs to virtually all goods imported from the United States with an average applied rate of 10 percent. Most imported goods are subject to tariff rates which range from 4 percent to 20 percent. There is an additional 5 percent "temporary" tariff surcharge on many agricultural goods. Peru has also applied a price band or variable levy on the following sensitive agricultural products: rice, corn, sugar, and dairy products. However, in 2007, the GOP took steps to address the rising prices of food commodities and eliminated most import duties on food items and agricultural inputs. This has contributed to slowing inflation pressures on food products earlier in 2008 when global commodities prices spiked.

Under the PTPA, 80 percent of U.S. exports of consumer and industrial products will become duty free immediately upon entry into force of the agreement. Within 5 years, an additional 6 percent will become duty free and another 4 percent within 7 years. Duties on the remaining 10 percent will be phased out over 10 years. Peru is in the process of joining the World Trade Organization (WTO) Information Technology Agreement, removing tariffs and nontariff barriers to information technology products.

In addition, more than two-thirds of current U.S. farm exports to Peru will become duty free immediately upon entry into force of the PTPA, including high quality beef, cotton, wheat, soybeans and soybean products, key fruits and vegetables, almonds, and many processed food products. Peru also will immediately eliminate its price band system on trade with the United States. These benefits, coupled with a preference clause included in the PTPA, will enable the United States to better compete with countries, both within and outside of the region, for Peru's market. Tariffs on other agricultural products will be eliminated gradually, most within 5 years to 15 years. Within 17 years, all U.S. agricultural exports will enter the Peruvian market duty free.

Nontariff Measures

The government of Peru has eliminated many nontariff barriers, and under the PTPA will subject remaining measures, including subsidies and import licensing requirements, to additional disciplines. Peru currently restricts imports of certain used goods, including used clothing and shoes (except as charitable donations, which are subject to the 19 percent value added tax), used tires, cars over 5 years old and heavy trucks (weighing three tons or more) over 8 years old. Used cars and trucks that are granted import permits must pay a 45 percent excise tax - compared to 20 percent for a new car - unless they are refurbished in an industrial center in the south of the country after importation, in which case they are exempted entirely from the excise tax. Additionally, Peru's prohibitions on the importation of used goods apply to U.S. remanufactured goods. Under the PTPA, Peru affirmed that it would not adopt or maintain prohibitions or restrictions on trade in remanufactured goods, and that certain existing prohibitions on trade in used goods would not apply to remanufactured goods. Upon entry into force of the Agreement, this commitment will provide new and significant export opportunities for firms involved in remanufactured products such as engines, automotive parts, mining and construction equipment, transportation machinery, medical equipment, and computers.

For textile and apparel products and footwear, Peru requires that products bear a label that, in addition to the name of the manufacturer, includes the name and address of the importer or distributor. Industry reports that such information is difficult if not impossible to know during the manufacturing process when permanent labels are attached. The re-labeling of products upon entry to meet these requirements results in additional costs and delays.

In 2006, the United States Government and the government of Peru resolved a number of significant sanitary and phytosanitary (SPS) and technical standards issues. Specifically, the two governments reached agreements addressing Peru's bans or restrictions on imports of U.S. beef and beef products (related to Bovine Spongiform Encephalopathy), poultry and poultry products (related to avian influenza), pork and pork products, and rice. The government of Peru has implemented these agreements through a series of resolutions and decrees. For example, in October 2006, Peru issued a Supreme Decree permitting the importation of all U.S. beef and beef products, except high risk materials, when accompanied by a sanitary certificate issued by the U.S. Department of Agriculture's Food Safety and Inspection Service. In addition, Peru formalized its recognition of the equivalence of the U.S. meat and poultry inspection systems, and eliminated a rice quality standard that discriminated against imports of U.S. rice. Restrictions still exist with regard to trade in live cattle. U.S. officials continue to engage Peruvian authorities in pursuit of science-based import requirements with respect to such trade.

15. (U) GOVERNMENT PROCUREMENT

Since 2002, Peru has applied a 20 percent price preference to bids

by Peruvian firms on government procurement contracts. The PTPA will require the use of fair, nondiscriminatory, and transparent procurement procedures for procurement covered by the PTPA. Under the PTPA, U.S. suppliers will be permitted to bid on the procurement of most Peruvian central government entities, including state owned enterprises such as Peru's oil company and Peru's public health insurance agency. When the PTPA is implemented, the price preference will no longer be applied to U.S. companies in procurement covered by the PTPA. The anti-corruption provisions in the PTPA will require each government to ensure under its domestic law that bribery in trade-related matters, including in government procurement, is treated as a criminal offense or is subject to comparable penalties. Peru is not a signatory to the WTO Agreement on Government Procurement.

16. (U) INTELLECTUAL PROPERTY RIGHTS (IPR) PROTECTION

Peru's implementation of the provisions in the PTPA's IPR chapter will bring about a number of important improvements in IPR protection, including: protection of trademarks used in Internet domain names; strengthened measures to prevent the circumvention of technological devices for preventing Internet-based copyright piracy; protection of test data and other undisclosed information submitted in connection with regulatory approval for pharmaceutical and agricultural chemical products; and provision of deterrent penalties against piracy and counterfeiting.

There have been government efforts to improve enforcement, including increased raids on large-scale distributors and users of pirated material, but piracy remains a problem. U.S. industry has called for increasing anti-piracy efforts in Peru with enhanced support from the Peruvian National police, and increased coordination between Peru's copyright office (INDECOPI) and local municipalities in order to revoke licenses granted to vendors selling pirate products.

Patents and Trademarks

Peru's 1996 Industrial Property Rights Law provides the framework for patent protection. In 1997, Peru addressed several inconsistencies with the WTO TRIPS Agreement provisions on patent protection and Most Favored Nation treatment for patents. U.S. industry representatives are pleased that INDECOPI has shifted the burden of proof in patent infringement cases from the patent holder to the alleged copier. INDECOPI has issued preliminary injunctions against presumably illegal copies and in 2006, U.S. pharmaceutical companies won several important patent infringement court cases. However, the U.S. pharmaceutical and agrochemical industries continue to have concerns about Peru's protection of undisclosed test and other data submitted in connection with marketing approval procedures. The PTPA contains provisions to address these concerns.

Enforcement

Despite some Peruvian government efforts to improve enforcement, including increased raids on large-scale distributors and users of pirated material, piracy remains widespread, due notably to a failure to apply deterrent penalties vigorously. The judicial problems should improve now that Peru has five courts and three prosecutors' offices that can specialize in IPR cases.

17. (U) SERVICES BARRIERS

Under the services chapter of the PTPA, Peru will assume commitments to provide nondiscriminatory treatment and market access in a substantial number of services sectors. These commitments significantly improve upon Peru's WTO commitments in terms of sectors covered and elimination of restrictions in sectors such as advertising, construction and engineering, energy, information, express delivery, and entertainment, including audiovisual services and broadcasting. The chapter also commits Peru to increased regulatory transparency and to free transfers associated with the supply of a service.

Financial Services

The financial services chapter of the PTPA provides for secure access and nondiscriminatory treatment across most banking,

insurance and securities sectors, and improves U.S. companies' ability to provide portfolio advice and certain kinds of insurance on a cross-border basis.

Telecommunications

Peru is continuing the process of developing a competitive telecommunications market. OSIPTEL, Peru's telecommunications regulator, has established a time frame to lower average mobile termination rates by more than half over a period of 4 years, from 2005 levels of roughly \$0.21 to under \$0.10 by January 2009. U.S. companies continue to complain that the rates should be further reduced and that unconstrained pricing by the dominant supplier has created significant barriers to competition in the wireless sector. Continued oversight and review of these rates by OSIPTEL will be important to achieving progress in addressing concerns raised by suppliers.

18. (U) INVESTMENT BARRIERS

Under the investment chapter of the PTPA, Peru will assume obligations relating to national treatment and Most Favored Nation treatment; assure the right of U.S. investors to make financial transfers freely and without delay; apply international legal standards for expropriation and compensation; and provide access to binding international arbitration.

Peruvian law restricts majority ownership of broadcast media to Peruvian citizens. Foreigners are also restricted from owning land or investing in natural resources within 50 kilometers of a border, but they can operate within those areas with special authorization. Under current law, foreign employees may not comprise more than 20 percent of the total number of employees of a local company (whether owned by foreign or Peruvian persons) or more than 30 percent of the total company payroll. Under the PTPA, Peru has agreed not to apply most of its nationality-based hiring requirements to U.S. professionals and specialty personnel.

U.S. firms sometimes complain that executive branch ministries, regulatory agencies, the tax agency, and the judiciary often lack the resources, expertise, or impartiality necessary to carry out their respective mandates. Peru's weak judicial branch is a particular problem. The resolution of commercial disputes that end up in Peruvian courts is often delayed, and judicial proceedings can yield results that are not foreseeable based on a review of relevant precedents. U.S. investors have also complained about the reinterpretation of rules and the imposition of disproportionate fines by the tax agency. Customs procedures and delays have also been cited as a major concern for U.S. companies importing products to Peru.

The Peruvian government has tried to address institutional weaknesses in the executive branch and has also offered plans for judicial reform. In July 2005, the Supreme Court issued an edict stating that final binding arbitration awards cannot be disputed in the domestic judicial system. The U.S. Government has worked with the government of Peru both before and in parallel with the PTPA negotiations to ensure the fair resolution of U.S. investor disputes, consistent with Peruvian law.